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In the Supreme Court

OF THE

United States

October Term, 1928

THE ANN ARBOR RAILROAD COMPANY, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, and CALIFORNIA GROWERS' AND SHIPPERS' PROTECTIVE LEAGUE,

Appellees.

Appeal from District Court, Northern District of California, Southern Division.

Statement of Basis on which Court Has Jurisdiction to Review Decree on Appeal.

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MAURICE E. HARRISON,
PLATT KENT,
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No. 273

Statement of Basis on which Court Has Jurisdiction to Review Decree on Appeal.

The appellants in the above entitled suit present this, their statement required by rule numbered 12 of the Revised Rules of the Supreme Court of the United States.

By this suit, the appellants sought to enjoin, suspend and set aside an order of the Interstate Commerce Commission which lowered certain rates charged by the appellants for transportation of deciduous fruits. The suit was heard by a Court of three judges

convened pursuant to the Act of Congress of October 22, 1913, 38 Statutes at Large, 220 (Code of Laws of the United States, Title 28, Section 47). On May 9, 1928, a final decree was made by the Court against the appellants, dismissing their petition and sustaining the order of the Interstate Commerce Commission. From that decree the appellants have appealed to the Supreme Court of the United States.

1. The jurisdiction of this Court to review said decree on appeal is sustained by the following statutory provisions:

The Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes" (38 Statutes at Large, 219) confers upon the District Courts the jurisdiction theretofore vested in the Commerce Court, including jurisdiction over all suits brought to enjoin, suspend, annul or set aside any order of the Interstate Commerce Commission. The same Act provides, with reference to an appeal from a final decree of the District Court in such an action, as follows:

> "A final judgment or decree of the District Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like

manner as appeals are taken under existing law in equity cases."

38 Statutes at Large, 220; Code of Laws of the United States, Title 28, Sec. 47.

By the Act of February 13, 1925, entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court, and for other purposes", Section 238 of the Judicial Code was amended to provide:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * * * *

"(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes', approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission other than for the payment of money."

38 Statutes at Large, 938; Judicial Code, Sec. 238; Code of Laws of the United States, Title 28, Sec. 345.

2. The decree sought to be reviewed upon this appeal was made and entered on the 9th day of May, 1928. Said decree appears at page 123 of the record on file in this Court and the date of making and

entry thereof is specified at page 125 thereof. The petition for appeal herein was presented and the order of said District Court was made on the 10th day of May, 1928. Said petition for appeal appears at page 126 of said record, and said order allowing appeal at page 150 thereof.

3. This suit was instituted by the appellants for the purpose of enjoining, suspending and setting aside a certain order of the Interstate Commerce Commission. The petition and bill for injunction of the appellants filed in the United States District Court for this purpose appears at page 1 of the record herein. The order of the Interstate Commerce Commission involved herein was made by the Interstate Commerce Commission on July 20, 1927, in a certain proceeding instituted by California Growers' and Shippers' Protective League, one of the appellees. The order of the Interstate Commerce Commission required the appellants to establish, within the time specified therein, rates which would not exceed $1.60 per one hundred pounds for the transportation of deciduous fruits in carloads from points in California to certain Eastern points, and rates which would not exceed $1.50 per one hundred pounds for the transportation of the same commodities from points in California to certain other points. The rates required to be established by the order of the Interstate Commerce Commission are substantially lower than the rates which were in effect at the time that the order was made. The petition and

bill for injunction of the appellants alleged and asserted that the order of the Interstate Commerce Commission was void, upon certain grounds more particularly stated in the assignments of error (page 129 of the record). After hearing by the District Court of the United States, a decree was made and entered by it on May 9, 1928, dismissing the petition and bill of the appellants and sustaining the order of the Interstate Commerce Commission (page 123 of the record). This decree of the District Court of the United States constituted a final judgment and decree of the District Court within the meaning of the Act of Congress of October 22, 1913, 38 Statutes at Large, 220, and pursuant to the provisions thereof, and of the Act of Congress of February 13, 1925, 38 Statutes at Large, 938, a direct review by the Supreme Court of the United States of this final judgment and decree may be had.

4. Cases which sustain the jurisdiction of this Court to review said decree are as follows:

Dayton-Goose Creek Ry. v. United States, 263 U. S. 456;

Stafford v. Wallace, 258 U. S. 495, 512;

Louisville & Nashville Railroad v. United States, 238 U. S. 1;

United States v. The Baltimore and Ohio R. R. Co., 225 U. S. 306;

Virginian Railway Company v. United States, 272 U. S. 658;
United States v. New York Central Railroad, 263 U. S. 603.

Respectfully submitted,

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GUY V. SHOUP,
Of Counsel.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of July, 1928.

_____

_____

Attorneys for Appellee California Growers' and Shippers' Protective League.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of_____, 1928.

_____

Attorney for Appellee Interstate Commerce Commission.

Receipt of a copy of the foregoing Statement is hereby acknowledged on this_____day of_____, 1928.

_____

Attorney General of the United States